

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FABIAN CHEVALIER MILLS,

Petitioner,

vs.

D.L. RUNNELS, Warden,

Respondent.

Case No. 2:03-cv-0264 JKS DAD

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an untimely Notice of Appeal from the judgment entered herein on December 14, 2007. Docket No. 35.

Before Petitioner can appeal the judgment, a Certificate of Appealability (“COA”) must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). “To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that . . . includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 482 (2000) (internal quotation marks and citations omitted).

The Court declines to issue a COA for the reasons set forth in the magistrate judge’s June 1, 2006, findings and recommendations and this Court’s order of December 14, 2007. No reasonable jurist could find that the California Court of Appeal’s rejection of Petitioner’s insufficient evidence argument was contrary to or an unreasonable application of federal law or based on an unreasonable determination of the facts. Nor could a reasonable jurist find that Petitioner was prejudiced by his counsel’s alleged ineffective assistance.

**IT IS SO ORDERED.**

Dated this the 10th day of November 2008.

/s/ James K. Singleton, Jr.  
**JAMES K. SINGLETON, JR.**  
United States District Judge